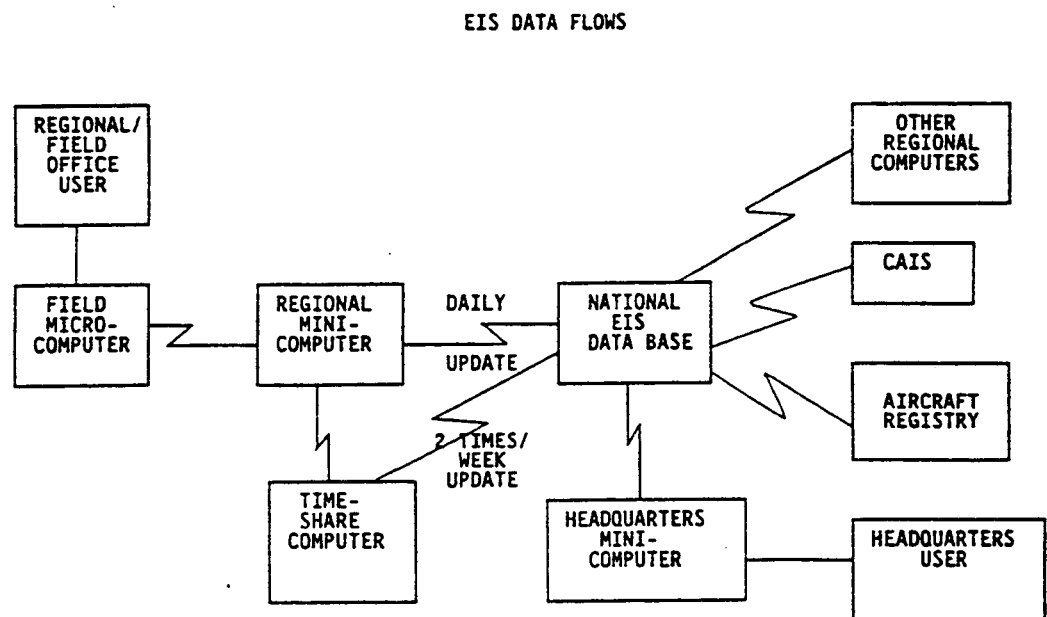


FIGURE 14-1.



APPENDIX 1. COMPLIANCE/ENFORCEMENT BULLETINS

COMPLIANCE/ENFORCEMENT-BULLETIN No. 84-1

SUBJECT: Procedures for notifying military authorities when the FAA has issued an order suspending or revoking an air carrier operating certificate.

DISCUSSION: The Department of Defense (DOD) uses United States certified air carriers, through long-term contracts or short-term charters, to transport passengers and freight domestically and internationally. The issuance of such an enforcement order may adversely impact on military personnel (and families) who are in the process of a permanent change of station transfer. DOD wants to be informed of the issuance of any orders of suspension or revocation, in order to make arrangements for substitute air transportation or other modes of transportation on a timely basis and with minimum interruption and inconvenience to its personnel.

ACTION: Assistant Chief Counsel, upon issuance of an order of suspension or revocation of an air carrier operating certificate, will advise by telephone, the following military authorities of the action:

1. During Duty Hours:

(a) Military Traffic Management Command Chief, Passenger Service
Division
(202) 756-1670

(b) Military Airlift Command
Mr. R. W. Kloeckner
Director, Contract Airlift Division
(618) 256-5426

2. During After Duty Hours:

(a) Military Traffic Manager Command Staff Duty Officer
(202) 756-1125

(b) Military Airlift Command
R. W. Kloeckner
Director, Contract Airlift Division
(618) 248-5289

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COMPLIANCE/ENFORCEMENT BULLETIN NO. 86-1

SUBJECT: Computer-detected altitude deviation of 500 feet or less.

DISCUSSION: The Air Traffic Quality Assurance Program (ATQAP) was designed to compile information concerning the safety and efficiency of the evolving National Airspace System in order to provide improvements to the overall air traffic system. It was not devised or intended to be used as a means for discovering altitude deviations. However, the Office of Flight Standards cannot ignore computer detected rules violations.

ACTION: Until further notice, a computer detected altitude deviation of 500 feet or less, where no near midair collision resulted, should normally be addressed by means of administrative action, unless a prior altitude deviation occurred within 2 years of the date of the subject altitude deviation or other aggravating circumstances require initiation of legal enforcement action. In determining whether a violation is "aggravated," all circumstances surrounding the incident (e.g., whether the deviation was deliberate or inadvertant, the hazard to safety, etc.) shall be considered.

GUIDANCE: The following checklist will be helpful in determining whether administrative or legal enforcement action is appropriate.

1. Review the individual's enforcement history to determine if a prior altitude deviation violation occurred within 2 years of the date of the subject altitude deviation. If such a previous violation has occurred within the specified period, legal enforcement action should be taken.
2. Analyze the facts and circumstances surrounding the violation to determine whether aggravated circumstances exist. If aggravated circumstances exist, legal enforcement action should be taken.

COMPLIANCE/ENFORCEMENT BULLETIN NO. 86-2

SUBJECT: Sanctions for unauthorized operations within Terminal Control Areas (TCA's).

DISCUSSION: In light of recent incidents of unauthorized operations within TCA's, the Chief Counsel's Office has analyzed sanctions previously imposed for violations of the pertinent regulation, FAR Section 91.90. Based on this analysis and information available to the FAA regarding incidents of unauthorized operations within TCA's, the Administrator has determined that the agency's current sanction policy has not provided an effective deterrent for such violations. For this reason, the Administrator has determined that safety in air commerce and air transportation and the public interest requires a change in sanction policy in this area and an increase in the severity of sanctions in order to promote vigilance and deter violations.

ACTION: Until further notice, the following guidance should be followed in cases involving the enforcement of Section 91.90.

1. Administrative action should not be used.
2. Suspension of airman certificates should not be less than 60 days (higher if there are aggravating factors).
3. Civil penalty action should be used only where suspension is precluded (e.g. by the NTSB "stale complaint" rule) or in limited instances where a civil penalty is more of a deterrent sanction. The maximum statutory penalty (\$1,000) shall be sought.

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COMPLIANCE/ENFORCEMENT BULLETIN NO. 88-2

SUBJECT: Enforcement action for Minimum Equipment List (MEL) violations that occurred prior to March 15, 1988.

DISCUSSION: The Administrator issued a policy statement, effective March 15, 1988, which clarified the agency's interpretation of MEL provisions governing the periods within which MEL items must be repaired or replaced. While, even prior to the issuance of this clarification, it was clear that an MEL did not allow carrying an open item indefinitely, it would not be fair to hold operators to the precise 3-, 5-, and 10-day limits articulated in the new policy statement. The Administrator has determined that, for violations which occurred prior to March 15, 1988, no legal enforcement action should be taken unless the item was deferred for more than 60 days.

For example, a violation involving an MEL item open for 50 days in the absence of aggravating circumstances would not normally be a candidate for civil penalty action, but should be dealt with administratively. Similarly, an item open for 75 days would be a candidate for civil penalty action for each flight taken during the last 15 days.

ACTION: The following guidance should be followed in cases involving MEL violations which occurred prior to March 15, 1988.

When the evidence establishes that an aircraft was operated with an open discrepancy which had been deferred in accordance with the approved MEL, and the discrepancy remained open for more than 60 days, appropriate civil penalty enforcement action shall be pursued.

COMPLIANCE/ENFORCEMENT BULLETIN NO. 88-5

SUBJECT: Sanctions for persons who board or attempt to board an air carrier aircraft with concealed deadly or dangerous weapons in their possession.

DISCUSSION: Data recently compiled by the FAA reflects a continuing upward trend in the detection of weapons being carried by persons who failed to declare and check them before attempting to enter a sterile area of an airport. The typical passenger appears to be one who simply forgets to declare his/her weapon and presumably has no intention of hijacking or sabotaging an aircraft, or committing any other crime of violence. In a majority of cases, the weapon is loaded.

The recently adopted Enforcement Sanction Guidance Table, Order 2150.3, Appendix 4, recommends the maximum range of civil penalty (\$7,500 to \$10,000) for an offense of this nature. The Office of the Chief Counsel and the Office of Civil Aviation Security have analyzed both the appropriateness of the existing sanction guidance and the reasons underlying the increase in this type of violation. Based on this analysis the Administrator has determined that: (1) In the average case, it is neither necessary nor realistic to collect a maximum range penalty to ensure future compliance by an air traveller who is a first time offender and has no criminal purpose in carrying the weapon; (2) The maximum civil penalty and criminal sanctions should apply only where there is evidence of intent to preclude detection, to dangerously display the weapon, or where the object is a bomb or other incendiary device; and (3) A civil penalty of several hundred dollars is too easily absorbed, does not serve as a sufficient reflection of the potential seriousness of the offense, and may not comport with Congress' intent in changing the statutory maximum penalty from \$1,000 to \$10,000.

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For these reasons, the Administrator has determined that safety in air commerce and air transportation and the public interest requires a change in sanction policy in this area in order to promote vigilance and deter future violations.

ACTION: Until further notice, the following guidance should be followed in cases involving the concealment of a deadly or dangerous weapon which would be accessible in flight in air transportation; i.e., enforcement of violations of Section 901(d) of the FAA Act:

1. Administrative action should not be used.
2. If the firearm is unloaded and the ammunition is not accessible, the amount of civil penalty should be \$1,000.
3. If the firearm is unloaded and the ammunition is accessible, the amount of civil penalty should be \$2,000.
4. If the firearm is loaded, the amount of civil penalty should be \$2,500.
5. If the firearm is artfully concealed or there is other intent to use or dangerously display the firearm, the amount of civil penalty should range from \$5,000 to \$10,000, and the case should be referred to the appropriate United States Attorney for criminal prosecution.
6. If an incendiary or explosive device is used, the amount of civil penalty should be \$10,000, and the case should be referred to the appropriate United States Attorney for criminal prosecution.

The Enforcement Sanction Guidance Table is being revised to reflect this change in sanction policy.

COMPLIANCE/ENFORCEMENT BULLETIN 90-1

SUBJECT: Unauthorized operations within newly established Terminal Control Areas (TCA's).

DISCUSSION: The Air Traffic Operations Service has recently initiated a program of establishing new TCA's at eligible locations. While TCA's are based on a standard model, each new TCA has a configuration unique to local terrain, approach and departure routes for the TCA primary airport, and other air traffic considerations. The implementation of a TCA involves a major change in air traffic procedures and the routes a pilot may use for uncontrolled VFR flight in the vicinity of the TCA. While the boundaries of the TCA are, to the extent practical, developed with consideration for prominent local ground references and electronic navigation aids, location of the new TCA airspace may be difficult for some pilots until they have had the opportunity to become familiar with the new routes and procedures.

The Air Traffic Operations Service has observed a high number of TCA intrusions in the first few days and weeks after implementation of each recently established TCA. The intrusions appear to be inadvertent, resulting from pilots' unfamiliarity with the new airspace configuration and procedures, rather than deliberate. Sectional charts depicting the TCA are normally distributed only one to two weeks in advance of the effective date of the TCA.

Compliance/Enforcement Bulletin No. 86-2 provides that, for violations of Section 91.90, administrative action should not be used and suspension of airman certificates should not be less than 60 days.

In consideration of the complexity of TCA airspace, and the time necessary for operators to become familiar with the new TCA boundaries and special procedures before implementation of a TCA, the general policy of Bulletin 86-2 is not a necessary or appropriate deterrent to inadvertent violations of newly established TCA airspace. Therefore, the use of administrative action in lieu of legal enforcement should ordinarily be used in such circumstances for a violation of FAR §91.90 occurring within a period of up to 60 days following the effective date of the TCA in which the violation occurred.

This policy represents a limited exception to Bulletin 86-2 and Paragraph 205.a. of FAA Order 2150.3A, and does not otherwise change those documents. Nor does this Bulletin affect enforcement policy for deliberate unauthorized operations in TCA airspace. This policy applies to cases already initiated if the violation occurred within 60 days following the effective date of the TCA in which the violation occurred.

Appendix 1

ACTION: Until further notice, the following guidance should be followed in cases involving violations of FAR §91.90 at locations at which a TCA has been established within the preceding 60 days.

1. Notwithstanding the policies set forth in Bulletin 86-2, administrative action should be initiated in the instance of a first-time, inadvertent violation of FAR §91.90 that occurs within 60 days of the date the TCA becomes effective. A previous violation of §91.90 at other TCA locations should not be considered, for purposes of this Bulletin, in determining whether an incident is a first-time violation.

2. A violation of §91.90 will be presumed to be inadvertent unless there is evidence demonstrating the contrary. In the latter case, the guidance in Bulletin 86-2 will apply.

COMPLIANCE AND ENFORCEMENT BULLETIN NO. 90-2

SUBJECT: Enforcement action for cases referred by the Inspector General of the Department of Transportation involving drug convictions and falsification of applications for airman medical certificates regarding drug- and alcohol-related convictions ("IG Match" cases), and other similar cases.

DISCUSSION: On April 11, 1989, the Administrator issued a notice of enforcement policy regarding the handling of more than 6,000 cases referred to the FAA by the Office of the Inspector General of the Department of Transportation, involving airmen with drug- or alcohol-related convictions who apparently failed to disclose such convictions on his or her application for an airman medical certificate. Notice of Enforcement Policy, 54 Fed. Reg. 15144 (April 14, 1989). The Administrator announced that in those "IG Match" cases involving driving while intoxicated (DWI) or driving under the influence (DUI) convictions and in cases involving most drug convictions, certificate action will ordinarily be initiated only when those convictions occurred after February 17, 1984. Notwithstanding this "lookback" period, the FAA reserved the prerogative to take certificate action in any case it considers aggravated even if the conviction falls outside the "lookback" period.

Questions have arisen concerning what cases should be considered aggravated and how the agency should handle referrals which involve various combinations of convictions, some of which are not related to drugs and alcohol. A question has also arisen regarding the appropriate action to take when the person who apparently falsified no longer holds a current airman certificate. The following guidance is provided for Security and legal personnel who are handling these cases.

Drug- and alcohol-related convictions.

Ordinarily, alleged regulatory violations stemming from convictions outside the "lookback" period should not be pursued. However, those convictions which appear aggravated should be investigated by Security and referred to the Assistant Chief Counsel for the Region, if deemed appropriate for enforcement action by Security. Examples of cases which might be considered for treatment as aggravated include flying while intoxicated, drug trafficking involving the use of an aircraft, cases in which the Department of Justice has deemed criminal prosecution appropriate, and cases involving multiple (e.g., four or five) DWI/DUI convictions.

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Generally, when an airman has some drug- or alcohol-related convictions which fall both inside and outside the "lookback" period, only those within the "lookback" period will be pursued. For example, if an airman had one DWI in 1986 and one or two DWIs in 1982, the case should be treated as a single DWI case.

Convictions not related to drugs or alcohol.

In some cases, persons against whom action will be taken because of unreported drug- or alcohol-related convictions also have other types of convictions that were omitted from their applications. If these convictions fall within the "lookback" period, Security should investigate if an Assistant Chief Counsel determines that it would be appropriate to include these convictions in the enforcement action. An Assistant Chief Counsel may decide that inclusion of these additional allegations would support the allegation of falsification regarding the drug- or alcohol-related conviction or further substantiate the sanction ordered. An Assistant Chief Counsel might also determine after appropriate consultation with Security, that falsification with regard to these convictions warrants a greater sanction. Such decisions are within the discretion of the Assistant Chief Counsel, and should be based on such factors as the number and nature of the other convictions, whether additional investigation would delay unreasonably the enforcement action or whether either the investigation or prosecution would consume a disproportionate amount of agency resources. If an increased sanction is deemed appropriate, that increased sanction could range, depending on the number and nature of the additional convictions, from several days' additional suspension to revocation of the airman certificates. Close coordination with Headquarters will be necessary to ensure uniformity among the regions. Accordingly, in any such cases, a copy of the notice of proposed certificate action and an explanation of the basis for the proposed action should be sent to AGC-250 before the notice is issued.

If the other conviction falls outside the "lookback" period and is not a felony, it ordinarily would not be included as part of the enforcement action and, therefore, would not warrant investigation by Security.

If a case is not going to be brought on the basis of a drug- or alcohol-related conviction, an airman's intentional falsification of some other type of conviction within the "lookback" period may warrant enforcement action. For example, when an airman falsifies with regard to a serious traffic conviction (e.g., reckless driving) or some other serious conviction (e.g., a felony), enforcement action may be taken. In such cases, Security personnel should consult with the Assistant Chief Counsel; if it appears that enforcement action

in the case might be taken, Security should conduct an investigation. Cases involving falsification of less serious offenses (e.g., speeding convictions) may not result in enforcement action. In such cases, Security should not investigate if, after consultation with the Assistant Chief Counsel, it is determined that enforcement action will not be taken.

If the other type of conviction is outside the "lookback" period, ordinarily no enforcement action would be expected unless the conviction is of a felony. In felony cases, Security should investigate if, after consultation with the Assistant Chief Counsel, it is determined that enforcement action would be likely.

ACTION: Persons who no longer hold airman certificates.

In some cases, the person who apparently falsified a medical certificate application and who would meet the criteria for taking certificate action will hold no current airman certificate. The most common case would involve a person who held a student pilot/third-class medical certificate which has expired. Consequently, no certificate action would be appropriate. In such cases, the person should be notified of the FAA's finding of apparent falsification and advised of the need to complete truthfully any future applications. A sample letter is appended to this bulletin. Security may have closed this type of case without investigation. Therefore, there would probably be insufficient information available to write to former certificate holders. Security need not reopen its investigation of these cases.

ACTION: The following sanction guidance with respect to drug- and alcohol-related convictions should be followed. The guidance set forth in the Discussion section should be followed with respect to aggravated drug and alcohol cases and convictions which are not drug- or alcohol-related.

A. Falsification of Convictions for Driving While Intoxicated or Driving Under the Influence (hereinafter DUI). (While the vast majority of DUIs involve alcohol, they might also involve driving under the influence of another drug.)

1. For a single DUI conviction, revocation of any current medical certificates and suspension of the pilot certificate for 60 days. (Suspension of the pilot certificate will be ordered even if the pilot holds no current medical certificate.)

The 60-day suspension period applies only in a case which involves falsification of a single DUI conviction alone. Thus, if some other information has also been omitted,

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(e.g., treatment for alcoholism), another, more severe sanction may be imposed. Even in cases involving a single DUI conviction alone, the FAA reserves the prerogative to impose a sanction more severe than a 60-day suspension if there are aggravating circumstances which warrant it.

2. For multiple DUIs, revocation of any current medical certificate and, except in extraordinary circumstances, any airman or ground instructor certificates.

B. Falsification of Drug Convictions (Cases Involving Sections 67.20 and 61.15 and/or 609(c)).

1. For a single conviction for simple possession, revocation of any current medical certificates and suspension of the pilot or flight instructor certificates for 180 days. (Suspension of the pilot certificate will be ordered even if the pilot holds no current medical certificate.)

The 180-day suspension period applies only in a case which involves falsification of a single conviction for possession alone. Thus, if some other information has also been omitted, (e.g., treatment for drug dependence), another, more severe sanction may be imposed. Even in cases involving a single possession conviction alone, the FAA reserves the prerogative to impose a sanction more severe than a 180-day suspension if there are aggravating circumstances which warrant it.

2. For one conviction for more than simple possession, revocation of any current medical certificates and, except in extraordinary circumstances, any airman or ground instructor certificates.
3. For two or more drug convictions of any type, revocation of any current medical certificate and, except in extraordinary circumstances, any airman or ground instructor certificates.

C. Drug Convictions Which Do Not Involve Falsification (Cases Under Sections 61.15 and/or 609(c)).

1. For single conviction for simple possession, suspension of any pilot or flight instructor certificates for 120 days.
2. For more than simple possession, except in extraordinary circumstances, revocation of any pilot or flight instructor certificates.
3. For two or more convictions, except in extraordinary circumstances, revocation of any pilot or flight instructor certificates.

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Appendix 1

EXPIRED STUDENT PILOT CERTIFICATES

February 15, 1990

A. George Smith
21-F Tentmill Lane
Arlington, Virginia 22202

89SO790003

Dear Mr. Smith:

On or about August 27, 1985, you applied for and were issued a Combination Student Pilot/Third Class Medical Certificate.

In response to Item 21.v. (Record of traffic convictions) of the application for the certificate, you answered "no" when in fact on April 15, 1989, you were convicted in Arlington, Virginia of Driving Under the Influence (DUI) and Speeding.

Accordingly, it appears that you made a fraudulent or intentionally false statement on your application for a certificate, contrary to Section 67.20(a)(1) of the Federal Aviation Regulations.

This conduct would ordinarily subject you to suspension or revocation of all airman pilot and airman medical certificates you hold. Our records reveal that the August 27, 1989, airman medical certificate has expired and that you hold no other certificate.

Be advised, therefore, that if you apply in the future for a student pilot or medical certificate, we will carefully review whether you have fully and truthfully responded to all items on the application. Failure to respond fully and truthfully will result in denial or revocation of all airman and airman medical certificates, and may also subject you to criminal prosecution pursuant to 18 U.S.C. § 1001.

Sincerely,

Assistant Chief Counsel

COMPLIANCE/ENFORCEMENT BULLETIN 90-3

SUBJECT: Unauthorized operations within Terminal Control Areas (TCA's).

DISCUSSION: Compliance/Enforcement Bulletin No. 86-2 provides that, for violations of Section 91.90, administrative action should not be used; suspension of airman certificates should not be less than 60 days; and civil penalty action should be used only where suspension is not possible or a civil penalty would be more of a deterrent than certificate action. The Sanction Guidance Table, which was incorporated as Appendix 4 in FAA Order 2150.3A after the issuance of Bulletin 86-2, provides that the normal range of sanctions for TCA intrusions is certificate suspension for 60 to 90 days.

While unauthorized intrusions into TCA airspace continue to be considered serious violations of FAA safety rules, it is not necessary that the special emphasis enforcement policy implemented in 1986 be retained permanently. Accordingly, it is the position of the Administrator that Bulletin 86-2 should be rescinded and that henceforth TCA violations should be handled in the same manner as similar violations of other airspace regulations.

Bulletin 86-2 had two primary effects on sanction determination. First, Bulletin 86-2 set a minimum sanction level that is higher than that indicated for similar violations. For example, the standard sanction range for violations of air traffic requirements in an Airport Radar Service Area (ARSA) or an airport traffic area is a suspension of 30 to 60 days. Second, Bulletin 86-2 limited discretion to reduce a proposed penalty below the minimum suspension specified in the Sanction Guidance Table. FAA Order 2150.3A provides, in appropriate cases, for the application of sanctions outside the normal range and for the use of administrative action. The rescission of Bulletin 86-2 permits the use of a broader range of sanctions for TCA violations where the appropriate circumstances exist.

This Bulletin rescinds Bulletin 86-2, effective immediately, and amends the Sanction Guidance Table to provide for a normal range sanction for TCA violations of a certificate suspension of 30 to 60 days. The policy will be applied not only to violations occurring after the effective date of the Bulletin, but also to cases in which an Order has not been issued as of the date of the Bulletin without regard to the date of the violation. In open cases in which an Order has been issued but in which the NTSB has not issued a final decision, the Assistant Chief Counsel, in consultation with the Manager, Flight Standards Division, will review the sanction proposed in each case for potential modification in line with the amendment to Order 2150.3A.

Appendix 1

ACTION: Effective immediately, and until further notice, the following guidance should be followed in any case involving a violation of FAR §91.90 in which an order has not been issued as of the effective date of this Bulletin:

1. Compliance/Enforcement Bulletin No. 86-2 is rescinded in its entirety.

2. Paragraph III.F.16 of the Sanction Guidance Table, Appendix 4 to FAA Order 2150.3A, is amended to read:

16. Operation in TCA without 30 to 60 day sus.
or contrary to a clearance.

3. In each open case in which an Order has been issued but in which the NTSB has not issued a final Opinion and Order, the Assistant Chief Counsel, in consultation with the Manager, Flight Standards Division, will review the sanction proposed for consistency with the provisions of Order 2150.3A, as amended. The Assistant Chief Counsel, in consultation with the Manager, Flight Standards Division, may take affirmative action to either settle the case or unilaterally modify the sanction sought, as appropriate.

4. The policy set forth in Enforcement Bulletin 90-1, which provides that administrative action should be initiated in the instance of a first-time, inadvertent violation of a newly established TCA, remains in effect.

COMPLIANCE/ENFORCEMENT BULLETIN 90-4

SUBJECT: Coordination of enforcement actions against airmen (except air carrier personnel) in nonsignificant cases.

DISCUSSION: The System Safety and Efficiency Review recently completed by the FAA included a recommendation to eliminate pre-issuance headquarters coordination of nonsignificant actions in general aviation airmen cases. The recommendation was in furtherance of the general objective of increasing the discretion of regional compliance and enforcement personnel to consider mitigating and aggravating factors in each case, and to adjust the sanction accordingly.

The elimination of the requirement for coordination will facilitate the efficient handling of these cases and promote the determination of appropriate sanctions in all such cases. However, it is important to ensure that there is deviation from the Sanctions Guidance Table only where appropriate, and that consistency be maintained through post-issuance review of individual cases and periodic evaluation of regional offices. Accordingly, after a case is referred to the Assistant Chief Counsel, a decision to deviate from the Sanction Guidance Table in actions against airmen in nonsignificant, general aviation cases will not require coordination with AGC-200; however, the reasons for the decision to deviate must be documented, and the Assistant Chief Counsel for the Region or his/her designee must concur in the decision in writing. A decision by field office personnel to take administrative action does not require coordination above the field office level.

ACTION: Effective immediately, and until further notice, the following guidance should be followed in non-significant actions against airmen in general aviation cases:

1. Notwithstanding the policies set forth in FAA Order 2150.3A, ¶1201.b and in the note at the end of the preamble to the Sanction Guidance Table, a decision to issue an enforcement action with a sanction outside the normal range of penalties indicated in the Sanction Guidance Table does not need to be coordinated with AGC-200.
2. An enforcement document proposing a legal enforcement penalty outside the normal range of penalties indicated in the Sanction Guidance Table shall not be issued until (1) the reasons for the decision to deviate from the Table have been documented, and (2) the Assistant Chief Counsel for the Region, or his or her designee, has concurred in the issuance in writing. The documentation of justification and the record of concurrence in each case shall be retained. A decision to take administrative action need not be coordinated above the field office level.

COMPLIANCE/ENFORCEMENT BULLETIN 90-5

SUBJECT: Policy and procedures for suspected violations of the FAA's alcohol- and drug-related prohibitions related to operation of aircraft.

DISCUSSION: This bulletin is a "quick reference guide" to summarize the authority of FAA personnel and provide guidance regarding the procedures to be followed in cases where an FAA employee suspects that a crewmember is violating or may violate the FAA's alcohol- or drug-related regulations contained in §91.11 of the Federal Aviation Regulations (FAR). This guidance applies to any crewmember of a civil aircraft, whether employed by an air carrier or conducting commercial or general aviation operations. This guidance supplements existing guidance in FAA Order 2150.3A, paragraph 509, and incorporates the guidance contained in the March 14, 1990, memorandum from the Administrator to all Flight Standards inspectors.

Pursuant to the Federal Aviation Act of 1958, as amended (the Act), an air carrier is under a duty to perform its services with the highest possible degree of safety in the public interest. 49 U.S.C. App. 1421. An air carrier and a crewmember of an aircraft primarily are responsible for conducting their operations safely and ensuring compliance with the FAR. Allegations that a crewmember has violated, or may violate, FAA alcohol or drug regulations must be investigated with the highest priority. Prevention of these violations is critical to flight safety.

Authority to prescribe rules. Under section 601 of the Act, it is the Administrator's duty to prescribe regulations to promote the safety of flight of civil aircraft in air commerce 49 U.S.C. App. 1421. Pursuant to that duty, the Administrator has promulgated §91.11(a), which prohibits any person from acting or attempting to act as a crewmember of a civil aircraft:

- (1) Within 8 hours after the consumption of any alcoholic beverage;
- (2) While under the influence of alcohol;
- (3) While using any drug that affects the person's faculties in any way contrary to safety; or
- (4) While having 0.04 percent by weight or more alcohol in the blood.

Authority to suspend or revoke certificates of airmen or air carriers. Under section 609 of the Act, the Administrator may issue an order amending, modifying, suspending, or revoking, in whole or in part, any certificate issued by the agency if, as a result of a reexamination or any other investigation, the

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Administrator determines that safety in air commerce or air transportation and the public interest require issuance of the order. Prior to issuing such an order, the FAA must advise the certificate holder of the charges or reasons for the proposed action and, except in the case of an emergency requiring immediate action, provide the certificate holder with an opportunity to respond. 49 U.S.C. App. 1429.

Authority to prohibit the operation of aircraft by crewmember in violation of §91.11(a). The Administrator has full authority over the safety certification of air carrier operations. 49 U.S.C. App. 1424. The Administrator also may issue orders, orally or in writing, as he deems necessary to carry out his powers and duties under the Act. 49 U.S.C. App. 1354. This includes the authority to make such orders immediately effective, without notice, to meet any emergency requiring immediate action in the interest of safety in air commerce. 49 U.S.C. App. 1485.

Authority to require crewmember to submit to alcohol test. As provided in §91.11(c), a crewmember must submit to a test to indicate the percentage by weight of alcohol in the blood where the following two conditions are met: (1) when requested by a law enforcement officer authorized under State or local law to conduct a blood alcohol test or to have a blood alcohol test conducted and (2) the law enforcement officer requests the test to investigate a suspected violation of State or local law that prohibits operation of an aircraft after consumption of alcohol, while under the influence of alcohol, or while having a certain blood alcohol concentration.

Flight Standards inspectors are not authorized under the regulations to require a crewmember to submit to an alcohol test. Also, not all States have enacted statutes prohibiting flying under the influence of alcohol or drugs or authorizing State or local law enforcement officers to request blood alcohol tests of crewmembers. Each district office manager should work with counsel to become familiar with the laws of each State in which they work, and provide such guidance in writing to all inspectors in the office for ready reference. This should include specific guidance as to when, and under what circumstances, an inspector should involve State or local law enforcement officials.

Flight Standards personnel must recognize the fundamental objective of the guidance provided below: to use all available FAA resources to prevent any person from acting as a crewmember while that person is under the influence of alcohol or drugs. Accomplishing this task sometimes requires ingenuity and quick thinking, especially when time is short. Prompt notification of Flight Standards

management and the air carrier, using the resources of the FAA communications centers, usually is the best way to obtain promptly the assistance needed to prevent operation of an aircraft in violation of the FAA's alcohol and drug regulations.

ACTION: Effective immediately, all employees of the Flight Standards Service and the Office of the Chief Counsel will use the procedures outlined in this bulletin to take appropriate action regarding violations of the alcohol- or drug-related prohibitions in the FAR. Any FAA employee who receives information regarding a crewmember's operation of an aircraft in violation of the FAA's alcohol or drug regulations immediately must contact a Flight Standards inspector and transmit the information to the inspector.

GUIDANCE: Specific procedures regarding violations of the FAA's alcohol- or drug-related regulations are set forth in FAA Order 2150.3A, paragraph 509. The following summary of procedures, in addition to the procedures in paragraph 509, should be used to determine the appropriate action to be taken by an inspector and counsel where FAA personnel receive apparently reliable and credible information that a crewmember may operate a civil aircraft in violation of §91.11(a). To the extent possible, full coordination with the Regional Administrator and counsel of all actions herein should take place in advance of the action. If the circumstances and time do not permit prior coordination, information should be provided as soon as possible to the Regional Administrator, through the appropriate channels, on all actions taken to address the situation.

1. Notification to carrier officials. If the crewmember is an employee of an air carrier, the inspector promptly shall share with an appropriate management official of the air carrier who is immediately accessible by telephone (1) all pertinent information to enable an air carrier to conduct its own investigation and (2) the steps that the inspector intends to pursue based on the information. The inspector shall give the air carrier all available information, protecting any confidential source who has requested anonymity, to enable the air carrier to take appropriate action. The inspector shall urge the air carrier to assist the FAA in its investigation and, if appropriate, to take action to ensure that the flight crewmember does not serve on the flight. The inspector should remind the air carrier official of the provisions of §91.11(a) and the authority of the FAA to prohibit, where warranted, the operation of the aircraft in the event the carrier fails to take action on its own. The inspector also should advise the air carrier official of 18 U.S.C. section 342, a criminal statute that provides for imprisonment and fines against "whoever operates or directs the operation of [an air] common carrier while under the influence of alcohol or drugs...."

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2. Notification to FAA personnel. The inspector also immediately should notify his or her supervisor and, in the case of an air carrier crewmember, the certificate holding district office or the certificate management unit that holds the air carrier's operating certificate, of the information and the action the inspector intends to pursue. These officials are encouraged to contact appropriate Washington headquarters officials in their chain of command, as time permits.

3. Notification to flight standards and counsel. If the inspector does not receive a response from the air carrier that resolves satisfactorily the inspector's safety concerns, the inspector immediately shall notify Flight Standards management in his or her chain of command, who in turn shall notify the Office of Assistant Chief Counsel in the region. Notification shall be elevated to the highest FAA management official (up to and including the Administrator) necessary to contact air carrier management so as to eliminate the agency's concern for flight safety.

4. Means of notification. The inspector shall use the most expeditious means available to communicate with FAA personnel and air carrier management, normally through the FAA Operations Center in the field. If necessary, the inspector may contact the Washington headquarters Operations Center [(202) 863-5100].

5. Notification to State or local law enforcement. Whether the crewmember is an employee of an air carrier or is conducting either commercial or general aviation operations, the inspector as soon as possible shall notify State or local law enforcement personnel, when appropriate, and request their assistance in the investigation or other appropriate action in accordance with paragraph 509 of FAA Order 2150.3A.

6. Legal enforcement action. If necessary to protect the safety of the traveling public and in furtherance of the public interest, the Administrator, the Chief Counsel, the Deputy Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and each regional Assistant Chief Counsel (pursuant to the Administrator's authority delegated under section 313(a) of the Federal Aviation Act, 14 CFR 13.20(1)) may issue an emergency order, either orally or in writing, to prohibit an air carrier from operating a particular flight with a particular crewmember or crewmembers or to suspend an airman certificate to ensure the safety of flight of civil aircraft in air commerce. The Assistant Chief Counsel for the region shall consult with the Regional Administrator where possible if consultation will not delay action necessary to protect aviation safety.

Any order shall be in writing, if time permits. The contents of a written order may be communicated orally by the inspector to the crewmember, the air carrier, or both. An order may be issued orally by counsel, and communicated by the inspector, if necessary to prevent operations detrimental to aviation safety, but the order must be reduced to writing as soon as possible. Each oral or written order must state the grounds for issuing the order, and must notify the respondent(s) of any right of appeal. Any order, whether written or oral, shall be served on the crewmember, the air carrier, or both, named in the order at the earliest possible time.

COMPLIANCE/ENFORCEMENT BULLETIN No. 90-6

SUBJECT: Reporting and correction policy and implementing guidance.

SUMMARY: The reporting and correction policy announced herein is intended to improve safety compliance by foregoing a civil penalty where a certificate holder has promptly disclosed to the FAA an apparent violation and has taken prompt action satisfactory to the FAA to correct the violation and preclude its recurrence. Notwithstanding a certificate holder's failure to report a violation, this policy also provides that the nature and extent of a certificate holder's voluntary remedial action may be considered in mitigation of any civil penalty otherwise appropriate. The policy applies to all holders of FAR Part 121 and 135 certificates issued in accordance with Title VI of the Federal Aviation Act of 1958. This policy may be extended to other categories of certificate holders by separate guidance in the future.

BACKGROUND: In recent years the FAA has imposed a number of large civil penalties on air carriers. These penalties have resulted largely from FAA inspections, such as those conducted under the National Aviation Safety Inspection Program (NASIP), its predecessors and other programs in other disciplines. Most of the violations detected have involved a certificate holder's failure to monitor adequately compliance with requirements of its approved aircraft maintenance program, operations programs, or similar approved operations requirements.

The recent incidence of large civil penalty cases discloses one clear lesson: air carriers and other certificate holders could do more to monitor their own regulatory compliance. Indeed, in many instances, noncompliance has been revealed in FAA's audits of a certificate holder's own records. Although safety in air transportation is a responsibility shared between certificate holders and the FAA, the ways in which this responsibility is discharged differ. While the FAA monitors the certificate holder's compliance through periodic inspections, the certificate holders clearly have a superior vantage point in monitoring their own performance, and have far greater resources to do so than FAA could ever acquire. Although the FAA regulates certificate holder's performance through standards and guidance and promotes compliance through enforcement actions, it is the certificate holders upon whom rests the primary and ultimate responsibility for safe operation and maintenance.

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Because the certificate holder is in the best position to identify deficiencies and promptly correct them, it should have in place a procedure whereby internal compliance audits are performed and top management is informed of its company's operations, compliance, and safety record. Such internal audits will improve the certificate holder's ability to identify and correct regularly any safety problems before, rather than after, FAA inspections. Public safety is enhanced significantly if deficiencies are identified and corrected when they are discovered by the certificate holder, instead of when the FAA discovers the deficiencies, sometimes much later on, in the course of an inspection or in the wake of an accident or incident. The policy announced in this bulletin is intended to serve as an incentive to institute and maintain a system of internal evaluation.

The FAA's enforcement program is not an end, but is rather a means to achieve compliance with the Federal Aviation Regulations through remedial and punitive measures. The purpose of civil penalties is not to collect money for the U.S. Treasury, but rather to help assure, through deterrence, compliance with safety requirements. The threat to a certificate holder of incurring substantial civil penalties is a traditional and often effective incentive to ensure compliance.

However, the negative incentive of deterrence, which civil penalties serve, is not always effective. While civil penalties have deterrent value, their payment does not necessarily improve a certificate holder's ability to assure future compliance. Moreover, given the current prospect of being heavily penalized even for inadvertent violations that did not adversely affect safety, there now is not much incentive to disclose such incidents to FAA when the certificate holders themselves discover them. Such disclosure would allow the agency to share appropriate safety alerts with other certificate holders.

The public interest in aviation safety is served also by positive incentives to promote and achieve compliance. Indeed, the FAA believes that aviation safety is best served by incentives to certificate holders to identify and correct their own instances of noncompliance and invest more resources in efforts to preclude their recurrence, rather than paying penalties. Prompt and meaningful remedial action to prevent the same or similar sort of violation from happening again more directly and substantially improves the safety of our national transportation system than the recovery of thousands of dollars in civil penalties.

The FAA has always considered the certificate holder's actions following the discovery of a violation relevant in determining the type and amount of sanction. But the amount of mitigation in such circumstances has been neither consistent nor substantial enough to serve as a positive incentive to achieve compliance. The following policy to encourage voluntary disclosure and prompt remedial action is hereby adopted.

Policy: In evaluating enforcement action for a certificate holder's actual or apparent failure to comply with FAA regulations, where all of the following circumstances are present, the FAA will not seek a civil penalty.

- (1) The certificate holder voluntarily and promptly discloses to FAA, by written report to the certificate holding district office (CHDO) or principal security inspector (PSI), as appropriate, the failure before the agency learns of it.
- (2) The failure is not deliberate or intentional.
- (3) The failure does not indicate a lack, or reasonable question, of basic qualification of the certificate holder.
- (4) The certificate holder, upon discovery of the failure, has taken or has begun to take immediate action to correct it (i.e., to cease any continuing or repeated violation).
- (5) The certificate holder has taken, or has agreed to take, remedial action satisfactory to FAA as may be necessary to preclude recurrence of such failure. Any action agreed to be taken must be completed.

Notwithstanding a certificate holder's failure to report an apparent violation, this policy also provides that the nature and extent of a certificate holder's voluntary remedial action may be considered in mitigation of any civil penalty otherwise appropriate.

However, where the certificate holder fails promptly to disclose and correct violations of which it was aware or should have been aware (for example, because the situation was obvious or because the company, through its auditing or evaluation program or other means, should have discovered the violation), substantial civil penalties, including the maximum allowed under the law, are warranted and may be sought.

Appendix 1

In a separate action against an airman arising out of an incident reported by the airman's employing certificate holder to the FAA under this policy, where the airman made the first report of the apparent violation to the employing certificate holder, the guidance of this policy should be applied in the determination whether to initiate legal enforcement action.

It is the responsibility of the Chief Counsel and the Associate Administrators for Regulation and Certification and for Aviation Standards to implement this policy. The policy is effective immediately, until further notice, and applies to all future enforcement cases as well as all pending cases in which a civil penalty letter or Notice of Proposed Civil Penalty has not yet been sent.

Action: In order to ensure that all elements of the policy are present, the following interim guidance should be followed.

(1) The appropriate Flight Standards or Civil Aviation Security division shall ensure that the facts and circumstances surrounding all apparent violations are thoroughly investigated, analyzed, reviewed and reported as outlined below.

(a) The inspector's investigative analysis should ascertain:

- (1) whether the failure to comply was deliberate;
- (2) whether the apparent violation was inadvertent (i.e., the result of simple failure to exercise reasonable care) or was the result of reckless disregard of safety requirements.
- (3) whether management officials in the company were aware of or involved in the violation, and, if so, to what extent.

(b) The investigating inspector should contact the CHDO or PSI as appropriate to determine, and gather written information which indicates, if and when the certificate holder discussed the apparent violation and when it became known to the certificate holder. In addition, the investigating inspector or special agent should consult with the CHDO or PSI, and the CHDO or PSI should determine the effectiveness of the certificate holder's action to preclude recurrence of the apparent violation.

- (2) The Letter of Investigation (LOI) should solicit evidence which establishes whether the certificate holder has satisfied the criteria of this policy. Each LOI should include the following language:

Your response should contain all pertinent facts, including but not limited to: how, where, and by whom the apparent violation was detected; when the certificate holder disclosed it to the FAA; the nature and extent of any action taken to correct it and preclude its recurrence; and any mitigating circumstances which you believe may be relevant.

- (3) The inspector's investigative report should include:

(a) Any evidence, including but not limited to the inspector's statement, of how, when, and where the apparent violation was detected and by whom.

(b) Evidence of whether and when the certificate holder disclosed the apparent violation to the CHDO or PSI, as appropriate, and when it became known to the certificate holder.

(c) The inspector's statement and/or evidence of whether and when the certificate holder took action to correct the apparent violation; i.e., to cease any conduct which did or might constitute a violation.

(d) The inspector's statement and/or evidence of whether the certificate holder has taken, or has agreed to take, remedial action acceptable to FAA to preclude recurrence of the apparent violation, including an analysis of the nature and likely effectiveness of such action.

(e) The EIS printout or equivalent summary listing similar violations by that certificate holder, in order to evaluate what remedial action, if any, may be necessary to preclude recurrence of the apparent violation.

- (4) Whenever it is determined under this policy that no civil penalty will be sought, the certificate holder should be so advised by a Letter of Correction issued in accordance with Section 13.11(b)(2) of the Federal Aviation Regulations. As provided in that Section, such a letter does not constitute a formal adjudication of the matter; however, civil penalty action may be taken in the event that the agreed corrective action is not fully completed. The CHDO or PSI, as appropriate, should monitor the completion of the agreed-upon remedial action.

- (5) The Letter of Correction should contain all pertinent facts, including but not limited to: how, where, and by whom the apparent violation was detected; when the certificate holder disclosed it to the FAA; the nature and extent of any actions taken to correct it and to preclude its recurrence; and any mitigating circumstances which were considered to be relevant.
- (6) Following issuance of the Letter of Correction, the case should be closed, subject to reopening in the event that agreed action is not completed. Until further notice, the file of each closed case should be forwarded to the appropriate Assistant Chief Counsel.
- (7) Regional personnel should direct inquiries regarding the application or interpretation of the policy contained in this bulletin, through channels, to the appropriate Assistant Chief Counsel.

COMPLIANCE/ENFORCEMENT BULLETIN NO. 90-7

SUBJECT: Revised Enforcement Investigative Report (EIR) format to be used in all Civil Aviation Security cases.

DISCUSSION: The Office of Civil Aviation Security desires to implement a single report format that can be used to document criminal and internal investigations as well as regulatory enforcement cases. Previously two report formats were used. Recently, the Office of Civil Aviation Security has experienced substantial growth in the programs involving criminal investigations and enforcement actions for drug related aviation activity. A single format that can be employed by all Civil Aviation Security special agents in all cases will greatly facilitate these new program efforts.

The features reflected in this new report format represent improvements that may, at some future date, be integrated into enforcement investigative reports agency-wide.

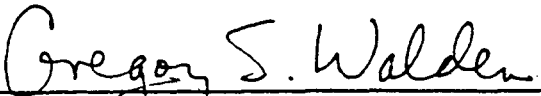
ACTION: This Compliance/Enforcement Bulletin is a revision of Chapter 9, Preparation of Enforcement Investigative Reports, to apply only to EIRs prepared by Civil Aviation Security. This Compliance/Enforcement Bulletin sets forth guidance in a revised Chapter 9A, Preparation of Enforcement Investigative Reports for the Office of Civil Aviation Security. It does not change the guidance set forth in the existing Chapter 9 for the preparation of EIRs by any office other than Civil Aviation Security.

All elements of Civil Aviation Security shall prepare EIRs in accordance with the guidance contained in Chapter 9A, Preparation of Enforcement Investigative Reports for Civil Aviation Security, which is attached to this Compliance/Enforcement Bulletin. This bulletin establishes a 12 month trial period during which the effectiveness of the new EIR format shall be reviewed. Quarterly critiques shall be forwarded by regional Civil Aviation Security Divisions and Offices of Assistant Chief Counsel. ACS-310 shall be the collection point for critiques and shall provide copies to AGC-260. An official determination will be made regarding the revised format after the completion of the trial period.


Following the effective date of this bulletin all Civil Aviation Security elements shall have 30 days to familiarize themselves with the new format. The new format shall be used for all EIRs prepared more than 30 days after the date of this bulletin.

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FORMS: Forms to be utilized are FAA Form 1600-75, Enforcement Investigations Report; NSN 0052-00-903-5000, unit of issue is a package (PK-50 forms to a PK), and FAA Form 1600-75.1, NSN: 0052-00-903-6000, unit of issue is a package (PK-50 forms to a PK). Both are available through normal supplies.



Gregory S. Walden
Chief Counsel



Raymond A. Salazar
Director of Civil Aviation
Security

Attachment

CHAPTER 9A. PREPARATION OF ENFORCEMENT INVESTIGATIVE REPORTS FOR CIVIL AVIATION SECURITY

900A. GENERAL.

a. The Enforcement Investigative Report (EIR) is the means for documenting, assembling, organizing, and presenting all evidence and other pertinent information obtained during an investigation. Since it is the document from which determinations of violations and sanctions are made, the report must be well-prepared, factual, and provide the proof required to substantiate the enforcement actions contemplated.

b. If at any time during the investigation the special agent determines that no violation occurred, the agent should terminate the investigation, and complete the applicable section of the EIR. If a letter of investigation was issued, all recipients should be notified that the matter has been closed.

c. If it is determined after evaluation of all the evidence obtained in the investigation that a violation did occur, the agent should recommend either administrative action or legal enforcement action, as appropriate.

d. Exercise extreme caution to ensure that no unauthorized person including the alleged violator, is informed of the agent's recommendations.

901A. REPORT PREPARATION. The Office of Civil Aviation Security (ACS) enforcement investigative reports shall be reported in accordance with instructions in this Chapter.

a. Administrative action or no action cases. When administrative enforcement action is taken, only FAA Form 2150-5 need be prepared in accordance with the guidelines obtained in paragraph 903A. See Figure 9-1. For "no action" cases, only the FAA Form 2150-5 and the Summary of Findings paragraph need be prepared. See paragraph 904A. The field office or region may elect to prepare or have prepared a complete EIR in cases involving complex or sensitive investigations notwithstanding the fact that administrative enforcement action is recommended.

b. Legal enforcement action. For legal enforcement action, the entire EIR should be completed. Prepare FAA Form 2150-5 in accordance with the guidelines in paragraph 903A.

c. Criminal enforcement action. For criminal enforcement actions the entire EIR (sections A and B) must be completed and referred to the appropriate U.S. Attorney. To aid the prosecuting attorney in the identification of the subject the FAA Form 2150.5 shall be replaced by an appropriately completed FAA Form 1600.32. Coordination with the Chief Counsel's office will also be accomplished.

902A. REPORT ASSEMBLY. The report will consist of Sections A and B. (The composition of the sections is covered in paragraph 904A.) Section A will consist of:

- (1) FAA Form 2150-5,
- (2) Allegation(s),
- (3) Citation(s),
- (4) Summary of Findings
- (5) Facts
- (6) Analysis

Section B consists of:

- (1) Exhibits

a. Report covers. The special agent will attach a front and back cover to the EIR; FAA Form 1600-75 and 1600.75.1 must be appropriately annotated to comply with the Privacy Act.

b. Section dividers. Indices labeled A, B, and appropriate numerical indices should be used when compiling the report.

c. Component headings. All subsection headings must be capitalized, underlined and in bold print. One blank line space must separate the headings from the narrative.

d. Names. The names of businesses and the surnames of individuals must be written in capital letters throughout the entire report to permit easy identification and location by the reader.

e. Terms. The word SUBJECT may be used in place of subject's surname and must be capitalized.

903A. SECTION A(1) - PREPARATION OF FAA FORM 2150-5. Information blocks on FAA Form 2150-5 shall be completed in accordance with the guidelines in paragraph b below. The report number, which identifies a specific EIR, should be entered as a 10-digit code consisting of the year, the region, the field office, and a sequential number as outlined in Chapter 14 (example: 88WP720001). Related enforcement investigative reports should be entered, in the same code form. See paragraph c(2).

a. Information required on FAA Form 2150-5 should be entered into the EIS using an interactive terminal which displays information as it is keyed. This form may then be printed out for use in the EIR. General information about EIS data entry is provided in paragraph b below. The pertinent information to be entered into EIS follows the guidelines in paragraph c below.

b. As a specific item (data element) is completed, the system will perform edit and validation routines to ensure the accuracy of each data element. The system edits use tables, range checks, omission detection and date validation to prevent erroneous information from reaching the EIS database. When an error is discovered, the terminal will display a descriptive error message and sound an alarm. Two types of errors can be indicated by the system: Fatal, which must be corrected before the user can continue; and Warning, which is displayed to alert the user to a potential error situation. Refer to the EIS User's Manual for additional guidance on data entry edits.

c. Instructions for completing FAA Form 2150-5 - Report Number and Related Cases.

(1) Report Number. Each report number as assigned from the individual ACS office shall be entered in the box in the upper right corner of Form 2150-5, labeled Report Number. An incident involving one allegation and one alleged violator will result in one Report Number. Example: During screening an individual is found to be carrying a weapon. This involves one alleged violation, and one alleged violator. Therefore, one Report Number is appropriate.

(2) Related Number. A related case number is used when there are two or more subjects (violators) involved in the same incident. A separate case shall be opened on each subject. For example, during screening at a connecting airport, an individual is found to be carrying a weapon. There will be one case opened against the individual, and a second case opened against the air carrier responsible for screening the individual at the original departure point. Each case will be assigned a separate case number in the upper right corner of FAA Form 2150.5. The special agent will enter the related case number in the appropriate box.

d. Instructions For Completing FAA Form 2150-5 - Items 1-33

Appendix 1

(1) Name. Enter the name of the alleged violator. The entry should show an individual by last, first and middle name. (e.g., Smith, Ralph Duane). The name of a legal entity should be shown in full (e.g., All American Airlines, Inc.; Ralph Duane Smith d/b/a All American Airlines; Tri-County Airport Authority; etc.). It would be helpful to include the air carrier designator or the airport identifier.

(2) Address/Telephone Number. Enter the current mailing address, including ZIP code, of the individual or legal entity. When practicable, the field office should verify this data. If the mailing address is a post office box, a street address to which over-night deliveries may be made should be included in the remarks section of the EIS. The telephone number is not a field in the EIS, but a complete telephone number, with area code, should be written on the print-out of FAA Form 2150-5.

(3) Date of Birth. Enter, in numerals, the date of birth of the individual alleged violator, in a six digit year-month-day (YY-MM-DD) format (e.g., 41-12-15; 54-05-23). Leave blank if not applicable.

(4) Sex. Enter male (M) or female (F). Leave blank, if not applicable.

(5) FAA certificate number. Enter the number of the FAA certificate held by the alleged violator, if related to the incident under investigation or the regulation believed violated. Use the code for NONE if no certificate is held or if certificate is unrelated to investigation.

(6) FAA certificate type. Enter the type of certificate referenced in Item (5) (e.g., commercial pilot; air carrier; airport operator; etc.). Leave blank if not applicable.

(7) Aviation employer. Enter the alleged violator's employer if the alleged violation is related to that employment, and the employment involves a segment of aviation or aviation-related activity. In cases involving passenger violations, or passenger/nonpassenger screening/sterile-area violations, the designator of the responsible air carrier(s) should be entered.

(8) Make. Enter the name or trade name of the manufacturer when an aircraft, aircraft engine, propeller, or aircraft component or appliance is involved in or related to the alleged violation. Blocks (8) through (12) may be left blank if not applicable.

(9) Model. Enter the model of the aircraft, aircraft engine, propeller, appliance, or aircraft component, as appropriate.

(10) Identification No. For an aircraft, enter the identification number. For an aircraft engine, propeller, appliance, or aircraft component, enter the serial number when available.

(11) Owner. Enter the name of the owner of the aircraft or the aeronautical product involved in the alleged violation.

(12) Owner address. Enter the current mailing address of the owner listed in Item (11).

(13) Date occurred. Enter, in numerals, the date(s), on which the alleged violation occurred, in a six digit year-month-day format (e.g., 90-03-30).

(14) Time. Enter the local time at which the alleged violation occurred using military time (e.g., 1105 for 11:05 a.m.; 1435 for 02:35 p.m.). Leave blank if a specific time of occurrence is not applicable.

(15) Date known to FAA. Enter, in numerals, the date on which FAA security first learned of the incident, in a six digit year-month-day format (e.g., 90-04-02).

(16) Region of discovery. Enter the two-character identifier of the region in which the alleged violation was first discovered (e.g., NM). (Note: This may not be the region of occurrence.)

(17) Location. Enter the geographic location where the violation is alleged to have occurred. Use the airport identifier and name (if appropriate), the city and state, and any information needed to describe the location relative to a specific airport or city. The airport identifier (reference FAA Order ATC 7350.5T) contains standardized airport identifier information.

(18) Regulations believed violated. Enter all regulatory violations believed substantiated by the evaluation and technical analysis. All violations listed shall stem directly from the investigation of the initial incident or allegation. Be specific in identifying the regulations by section and subsection as appropriate. For example, if the rule believed violated is Section 108.5(a) (1), enter it as such; do not enter 108.5. In those cases where the regulation cited fails to adequately identify the act or aggravated circumstance involved, and the investigating agent believes that clarification is necessary, a clear text statement of not more than 150 characters may be inserted in this block following citation of the rule believed violated (e.g., ACSSP Section IV.A.4).

(19) Type. Enter the two-digit code (see Appendix 3 for code listing) which best describes the type of activity the alleged violator was engaged in at the time of the alleged violation.

(20) Sub-type. Enter the two-digit code (see Appendix 3 for code listing) which best describes the sub-type of activity in which the alleged violator was engaged.

(21) Category. Enter the two-digit code (see Appendix 3 for code listing) which best describes the category of the alleged violation.

(22) Source. Enter the two-digit code (see Appendix 3 for code listing) for the source of the initial information relating to the alleged violation.

(23) Accident associated. Enter code 00 if an accident was not associated with the alleged violation, or code 01 if an accident was involved. If the alleged violation caused the accident, enter code 02. The National Transportation Safety Board definition of an accident is controlling.

(24) Security program. This section of the form is for use in security violations only. From one to eight individual two-digit codes may be entered in sequential order (see Appendix 3 for code listing).

(25) Type action recommended or taken. Enter one of the following actions (items 25 through 28 need not be completed in airman medical cases):

- (a) Administrative action
- (b) Civil penalty
- (c) Suspension
- (d) Emergency suspension
- (e) Revocation
- (f) Emergency revocation
- (g) Referral to DOD
- (h) Referral to foreign government
- (i) Criminal action

(j) Other recommended action should also be entered in addition to one of the above, when appropriate (e.g., aircraft seizure; cease and desist order; injunctive action; order of compliance).

- (k) No action

(26) Recommended sanction. Enter one of the following sanctions:

- (a) Warning Notice
- (b) Letter of Correction
- (c) The dollar amount for recommended civil penalty.

(d) The recommended duration for period of suspension (e.g., 180 days; pending compliance).

(e) No sanction need be entered when the recommended type action is other than administrative action, civil penalty, or suspension.

(27) Date. Enter the date signed by the field office Manager.

(28) Investigating office. Enter the appropriate region or field office identifier (e.g., NW71; CE72). (See Chapter 14.)

(29) Regulations believed violated. Same as instructions for Item (18). If the investigating field office entered an incorrect regulation in item (18), the correct regulation should be cited. (See paragraph 1001b.) May be left blank for administrative actions.

(30) Recommended type action. Same as instructions for Item (25). (See paragraph 1001b.) May be left blank for administrative actions.

(31) Recommended Sanction. Same as instructions for Item (26). (See paragraph 1001b.) May be left blank for administrative actions.

(32) Date. Enter the date signed by regional division.

(33) Region. Enter two-letter identifier for the reporting region (e.g., GL, NM, SO).

904A. REPORT FORMAT.

a. Section A will contain FAA Form 2150-5, followed by FAA Form 1600-32-1. FAA Form 1600-32-1 will contain the following subsections:

(1) Allegation(s). This subsection must specifically state the allegation(s) made that led to this investigation, or succinctly describe the incident being investigated.

(2) Citation(s). This subsection must specify the law(s), regulation(s), or order(s) that allegedly has been violated. The agent shall provide a plain-language description of the citation which is concise but conveys its essential content. If a criminal violation is cited, the agent must provide the regulatory or administrative citation(s) which also address the allegations.

(3) Summary of Findings. This subsection must contain a sharply focused and concise statement of what the investigation found, i.e., whether or not the allegation was supported or refuted. This subsection provides the attorney with a quick reference point and summary of the case. A separate paragraph, under this subsection, shall contain a summary of information as submitted by the subject of the investigation. In cases which possess the potential for criminal prosecution, a final paragraph shall indicate whether the U.S. Attorney accepted or declined prosecution of the case.

(a) The Summary of Findings subsection need not be included in a security EIR in extremely simple cases where the "summary" and the "facts" would essentially be the same. Under no circumstances will this subsection be omitted in criminal cases.

(4) Facts. The fourth subsection shall be entitled "Facts". As the name implies, this subsection must contain only facts in clear and concise language. No opinions, conclusions, or recommendations may be included in this subsection of the report. The special agent must describe all the pertinent facts and circumstances. The facts should be presented in an orderly and logical statement of each significant fact and related investigative action, with a reference to specific supporting exhibits. The agent should describe the incident with as much detail as necessary to assure an understanding of the investigation but strive to be clear and avoid long narrative descriptions. Short, bullet statements or paragraphs are preferred. In this subsection, the agent should reference the exhibits that are contained in Section B to indicate which evidentiary exhibits support each fact.

(5) Analysis. The fifth subsection must analyze how aviation safety or security was or was not affected, the alleged violator's attitude, enforcement history, economic considerations, and impact on the livelihood of the alleged violator. The reliability of evidence shall be evaluated and conflicting evidence discussed. It may be necessary to again reference specific supporting exhibits. Under this subsection only, the agent may include opinions, feelings and conjectures, which should be characterized as such. The agent shall provide a conclusion and set out the reasons justifying the recommended enforcement action and sanction. For a list of items to be included in the analysis, refer to paragraphs 205-207. The analysis subsection shall be completed on a separate page (FAA Form 1600-32-1) to facilitate Privacy Act considerations.

(a) The investigator must determine, based on the analysis of the facts, the following:

1 Whether the alleged violation occurred?

2 Whether the elements outlined in paragraph 205 were met? If so, outline the proposed administrative action. If not, determine the appropriate legal sanction. Refer to paragraph 206.

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3 Whether any mitigating or extenuating circumstances were revealed by the investigation or presented in the response to the Letter of Investigation. Any aggravating circumstances, such as repeated violations, should be evaluated.

4 What is the appropriate sanction? (Refer to paragraph 207.) Discuss amount recommended in the Sanction Guidance Table (Appendix 4) and any factors noted in (3) above. Any deviation from the Sanction Guidance Table must be fully explained.

(b) If information is received after the EIR has been forwarded to the region, the special agent shall prepare a new analysis and forward it through appropriate channels. This analysis shall indicate whether, based on the new information, the special agent has changed his or her conclusions or recommendations regarding the facts, the regulations violated, or the proposed sanction.

b. Section B. Shall include an "Index of Exhibits," and all exhibits referenced in the report. The index will contain a list of the exhibits by numeric symbol and give a short description of the exhibits submitted with the report. Each exhibit must be numbered consecutively and be arranged in a logical order to facilitate a review. Each exhibit referenced in the "facts" shall be included as an exhibit in section B. Items included in this section are:

(1) Special Agent's Statement. This exhibit will contain the background information of when, where, and how the special agent discovered the alleged violation. A statement on an incident reported by a law enforcement agency should provide sufficient background information to provide an adequate understanding of how the violation came to the attention of the FAA. An agent's statement shall be included in all cases where the personal observation of the agent is a significant factor in proving or disproving the case.

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(12) If the airman fails to meet any term or condition of the program or the agreement, the airman shall be notified by letter, sent by certified mail with return receipt requested, that participation in the training program has been terminated, and that appropriate legal enforcement action will be taken. A sample Letter of Termination is provided in Attachment 4 to this Bulletin.

(13) There must be a clear division between enforcement activities conducted by the investigating inspector and remedial training activities conducted by the APS. The APS should guard against being drawn into the legal enforcement action process. In a legal enforcement action taken if the airman fails to complete the training program, the response to the LOI may be used as evidence but information provided to the APS by the airman will not be used as evidence.

Applicability: The policy set forth in this compliance and enforcement bulletin is effective immediately and applies to all apparent violations in which an EIR was opened on or after March 5, 1990, the date on which the Administrator announced this and other compliance and enforcement policy initiatives. Additionally, in order to ensure broad application, it also will be applied to any other open case in which initial legal enforcement action (notice of proposed certificate action or civil penalty) has not been issued.

Attachments

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(b) Record of interview. The purpose of a record of interview is to provide a narrative to explain the substance of a witness' observations. This is accomplished by including information given in the interview which is not included in the statement, if one has been obtained. If a signed statement cannot be obtained, the record of interview provides the substance of the information provided by a witness.

(c) Interviews. When recording either statements or records of interview, each person interviewed will be identified by name, address, phone number, occupation and/or title, date interviewed, place interviewed, how associated with the investigation, etc., with sufficient specificity to identify the witness and indicate his/her qualifications. The agent should attempt to obtain a signed sworn statement from the subject. If the age of a witness has a bearing on his/her credibility, it should be included, e.g., interviews of juveniles. Any of the above information that has not been included in a written statement should be included in the record of interview. The last paragraph of the interview should be in the following format when a statement has been given:

The interview with Jones was reduced to a signed, sworn statement and it is included as EXHIBIT 4

(d) Reporting Negative Interviews. When persons who are interviewed indicate that they have no knowledge or information pertinent to the matter under investigation, (i.e., negative interviews) a record of these interviews may be reported on a single report form by listing and fully identifying each individual interviewed with the following statement:

The following persons were interviewed and stated they had no knowledge pertinent to the matter under investigation.

Similarly, when records are checked during an investigation with negative results, e.g., police records, the sources of the record should be identified and the results summarized on a single report form.

(6) Record Review. A report of a record review does not quote verbatim the substance of a record, but is an explanation of a technical form or record in plain language. The report will indicate where the record was obtained, from whom it was obtained and provide any necessary explanation. If the record reviewed is not an original, the report will reflect where the original is located, whether or not it is obtainable, from whom and under what circumstances it can be obtained; i.e., by subpoena, court order, etc. Original documents and certified, or authenticated, copies of official records should be obtained whenever possible. (When in doubt, check with the appropriate Office of Assistant Chief Counsel.) Only those documents secured during the investigation phase which serve to prove or disprove the allegations should be attached as exhibits. In dealing with any documents, records, or other material, the agent must ensure that the necessary "chain of custody" is preserved, and document the chain of custody.

(7) Photographs. Paragraph 407 identifies logistical elements to consider when using photos. It is recommended that the agent place the pertinent information, not only on the back of the print but also, on the front of the paper to which the photo is attached. Appropriate chain of custody shall be maintained as needed.

(8) Reference items. Copies of appropriate sections of an air carrier's approved security program and airport security plans that are cited as alleged violations must be included in the report. These are vital documents required to prove the allegations cited in the EIR and must reflect the regulations or security program or plan that was in effect at the time of the violation.

905A. PROTECTION AND RELEASE OF EIRs.

a. Protective markings. Enforcement investigative reports normally qualify for the designation of "FOR OFFICIAL USE ONLY" (FOUO) and shall be so marked unless the report contains national security information requiring a security classification. (See Order 1600.15, Control and Protection of FOUO Information).

b. Release of investigations. Request for release of the EIR or investigative information should be handled in accordance with FAA Order 1200.23, Public Availability of Information. An EIR or any part of an EIR should be released only with the concurrence of the appropriate office of the Assistant Chief Counsel. Information of a security nature may be released only by the Director, Office of Civil Aviation Security, ACS-1, in accordance with FAR Part 191. Refer to Action Notice 1650.8, dated February 16, 1990, for additional guidance.

906A. EMERGENCY ENFORCEMENT ACTIONS. The appropriate handling of a violation requiring emergency certificate suspension or revocation involves participation or initiation of such action by the Assistant Chief Counsel, prior to actual completion of the EIR. An advance or partial EIR should be prepared and forwarded, and legal counsel should be provided copies of all evidence that supports the alleged violation. The complete EIR package should be completed as expeditiously as possible.

907A. REGIONAL COPIES. The distribution requirements of paragraph 1405 do not provide for a regional division copy of the EIR package. If an additional copy of the report is desired, divisions may either make copies or request that the field offices provide an additional copy.

908A. DOWNGRADING OF EIRs. EIRs initiated by the field office or regional division for legal enforcement may, in some cases, be returned for downgrading to administrative action or no action [paragraph 1002b(5)]. In this case, the investigating office should prepare and process an appropriate EIR using the same EIR number shown on the original, and with the annotation at the top of the form, "DOWNGRADED."

909A. - 999A. RESERVED.